In the Supreme Court of the United States.

October Term, 1897. No. 192.

DANIEL DULL AND NELLIE M. DULL,
Plaintiffs in Error,

vs.

JOHN E. BLACKMAN, EDWARD PHELAN, EDWARD R. DUFFIE, AND GEORGE F. WRIGHT,
Defendants in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ISAAC N. FLICKINGER, *for Plaintiffs in Error.*

WINFIELD S. STRAWN, *for Defendants Phelan, Duffie and Wright.*

BRIEF ON MOTION TO DISMISS OR AFFIRM.

THE MARGINAL FIGURES (THUS[100]) GIVE THE PAGE OF THE RECORD.

Statement of the Case:

In February, 1892, Blackman commenced suit against Wright in Pottawattamie county, Iowa,[1] to recover back 550 acres of land lying in that county, which land Dull had conveyed to Blackman June 25th, 1889; and Blackman had conveyed to Wright on August 2d, 1889. In September, 1892, Phelan intervened[3] in the suit, claiming the land by a conveyance thereof from Blackman, of date January 30th, 1892, which conveyance was at first conditional, but while said suit was pending it was made absolute.[3a] Blackman's petition was then amended and Dulls were made parties to it and to Phelan's intervention. From thence on Blackman dropped out of the case and Phelan was the real

plaintiff.[100] On February 2d, 1893, Dull and wife appeared in the suit;[12] and on the 15th of that month answered[13] by general denial, and that they had a suit then pending in the courts of New York on the same issues as those presented in the case at bar. With said answer they filed their *cross-petition*,[14] alleging that in June, 1889, Dull owned the Iowa land in controversy; that Blackman, with intent to cheat and defraud Dull out of said Iowa land, had represented to Dull that Blackman owned 85 per cent of the title to the lot at Broadway and 51st streets in the city of New York; that Blackman was a man of means who could and would enforce his said claim of title to said lot; that Dull relying upon said representations, and in consideration of receiving said Broadway lot, had deeded the Iowa land to Blackman; that Blackman's said representations were false; that he did not have 85 per cent of the title; and that he was not a man of means and able to enforce his said claim of title, and that the consideration of the conveyance by Dull had failed. Dulls made Phelan and Duffie parties[16] to their said cross-petition, claiming that the deed to Phelan and the mortgage to Duffie, both on the Iowa land, had been taken with knowledge of Dull's alleged claims thereto. *On these various grounds* Dull's prayed *affirmative* relief.

In May, 1893, Dulls amended their said cross-petition[17] and alleged that the New York suit had gone to judgment in their favor and constituted "a complete adjudication" of the controversy in the Iowa courts and was a "bar" to its further prosecution. By a further amendment of their cross-petition[20] on July 11th, 1893, Dulls alleged that Blackman had, subsequent to Dull's deeding to him the Iowa land, deeded the Broadway tract *to Dull's landlord*, one Lyon who had long previous rented that very tract to Dull; that the consideration for Dull's deed for the Iowa land had failed,

and that Wright's Duffie's and Phelan's interests in the Iowa land were ficticious, and that said parties had conspired to defraud Dulls out of the said Iowa land. Dulls prayed for the cancellation (1) of their deed to Blackman for the Iowa lands and (2) of Blackman's deed to Wright therefor; (3) of Blackman's deed to Phelan; (4) of Wright's mortgage to Askwith, and (5) for the quieting of their (Dulls') alleged title to the Iowa land. No prayer for the cancellation of Duffie's mortgage was made. A copy of the alleged New York decree was set out as an Exhibit.[18]

Wright, Phelan and Duffie each[21 to 28] answered Dulls' cross-petition, denying all its allegations; and each denied any jurisdiction of the New York court, either over them or over the land in controversy; denied having ever been in the State of New York while said suit was pending; denied ever being served with any notice of said suit, except by the delivery of an alleged summons to them in the State of Nebraska; and each denied that he had ever in any manner appeared in or to the alleged suit in New York. Duffie and Phelan both pleaded as an estoppel against Dulls that a settlement of all matters in dispute and of all Dull's claims in or to the Iowa land was had between Dull and Blackman, and that they then communicated that fact to Duffie, who took his mortgage in reliance thereon; and communicated the fact of the settlement to Phelan, who took his deed absolute in reliance thereon; and that when Dull deeded the Iowa land to Blackman, the former took from Blackman a note for $10,000.00, and, to secure the payment of the same, took a valid mortgage on the said Broadway tract; and also had a deed therefor from Blackman to him (Dull) made and delivered in *escrow;* and that Dull neglected to place his said mortgage on record and thereby made the opportunity for Blackman to convey his interest in said Broadway lot

to Lyon (*from whom Dull was then renting the premises*) without notice of Dull's rights under the mortgage. They further pleaded that Dull had not returned or offered to return either the $10,000.00 note and mortgage made to him by Blackman on the Broadway tract or the deed for it.

It will thus be seen that the cause, so far as Dulls were concerned, and as it went to the Supreme Court of Iowa, and so far as it comes to this court, was made and tried on the affirmative allegations of Dull's cross-petition and the answer and defenses of Phelan, Duffie and Wright *(but not Blackman)* thereto, and that the decision was against Dulls on each and *all* of the several issues and matters involved.

After a trial of the various issues on the evidence in the case, the District Court entered its decree,[105] finding the facts to be that on June 25th, 1889, Dull owned the Iowa land in controversy; that on that date he duly conveyed it with warranty to Blackman, and received from Blackman his note for $10,000.00, secured by a mortgage on the Broadway lot; that on August 2d, following, Blackman conveyed the Iowa lands to Wright for $10,000.00 to be advanced, but that no money was in fact advanced; that January 30th, 1892, Blackman deeded the land to Phelan as security for money advanced him by the latter, and as further security for $5,500.00 due from Blackman to Duffie, and as security for $1,000.00 which Blackman owed one Savage, and that on September 14th, 1892, Phelan fully purchased said land from Blackman and the deed of January 30th, 1892, by a written agreement,[38] became absolute, but that the land remained subject to Duffie's and Savage's claims; that in October, 1889, Blackman quit claimed away to one, Lyon, the Broadway lot which he had mortgaged to Dull, and for which he had made to Dull a deed in *escrow;* that since the

commencement of this suit, and prior to the commencement of the New York suit, Dull had deeded the Iowa lands to his wife Nellie M; that in February, 1892, Blackman and Dull fully settled the dispute between them as to the land in controversy in this action, Dull taking an interest in the speculation in other realty in New York City and in the State of New Jersey, which Blackman laid claim to as assignee and grantee of Hopper's heirs; and that both of them communicated to Duffie the fact of the settlement, and in reliance thereon Duffie took his mortgage for $5,500.00 on this Iowa land; and that in the same reliance Phelan took title as absolute owner; and that Blackman and Dull returned to New York and acted on their said settlement; and that Dull never returned or offered to return either the $10,000.00 note or the mortgage made to secure the same, or the deed placed in *escrow* for the Broadway tract; that all the acts of Blackman, claimed by Dull as frauds on him, were well known to him shortly after the same occurred and long before Blackman conveyed the land to Phelan, yet that Dull took no steps to assert title to said land or to annul his conveyance thereof to Blackman, until the filing of his cross-bill in this case, which was some three years and more afterwards.

It was ordered that the deed of Blackman to Wright, and Wright's mortgage to Askwith, be cancelled, and the title to the land be quieted in Phelan, subject to Duffie's mortgage and Savage's claim; and Dull and wife appealed to the Supreme Court of Iowa;[108] which court, under the provisions of the Constitution of that State, (Art. V. § 4) tried the cause *de novo*, and found *the facts* as well as decided the law of the case. Said court in an opinion[127] written and filed as required by law (Code § 143 and § 3205) affirmed "in all respects" the said decree of the district court. Of said court's

findings of some facts and its specific approval of others as found by the district court,[105] and its decision on questions of fact and issues other than the alleged Federal one, and the sufficiency of its decision on such other questions, to sustain its judgment, without reference to the alleged Federal questions, we will speak further in our brief.

BRIEF.

I. *On the Motion to Dismiss.*

Of the parties defendant hereto we may here say that as Wright and Askwith were, by the decree of the State court,[107] cut off from all interest in and claim to the Iowa land and have not appealed or complained of said decree, it is not quite clear why Wright should be made a party to the proceedings in this court. As to Blackman, he was not at the time Dulls appeared and filed their cross-bill[18] (which was Feb'y 15, 93) a party to the suit, but *prior to all that*, and on January 26th, 1893, he had been formally dismissed from the case and Phelan substituted as plaintiff.[100] No one objected to this, and Dulls *did not appear* in the case till February 2d, 1893,[13] or a week after Blackman's *formal* connection had ceased.

His *actual* connection with the case had ceased on Sept. 14, 1892, when the conditional conveyance to Phelan had been made absolute[38] and this, it must be borne in mind, was prior to Dull's commencing his pretended suit in New York, which was Nov. 4, 1892;[42] and even prior to Dull's parting with all his alleged interest in the land to his wife, which was on Sept. 22, 1892.[81] There was no decree *as to him* either in the District Court of Pottawattamie county, or in the Supreme Court of Iowa. The decree herein complained of by the Dulls, is only between them and Phelan, Duffie, Wright, Farrar, Tefts, Askwith and Holcomb.[107] And in decreeing costs he is not even mentioned.

Dull's intervention, *after Blackman was dismissed from the suit*, alone raised the issues which are sought to be litigated here. And that they knew that Blackman was not in the suit then or at the time of trial in the lower court, is shown by the recitals in a stipulation which Dulls themselves offered in evidence at the trial as evidence on their own behalf and which reads: "*The substituted plaintiff* and intervenor Ed. Phelan consents," etc.[80] Blackman took nothing by the decree; did not appear in the Supreme Court of Iowa, does not appear in this court and was not served with any process in this cause. There was no question made in the State court of whether or not *he* was bound by the decree (if one there was) of the New York court against him, *in personam*, but the question was whether Phelan and Duffie or the land in Iowa were bound thereby; and as preliminary thereto, the most important question was one of *fact*, and that issue was whether the New York court had any jurisdiction[23] of Phelan, Duffie, Wright or the land and, consequently, whether said court had *actually made* a decree to bind anybody or anything in this suit. And on *that issue* the Iowa courts also found against Dulls.

Plaintiffs in error themselves presented to the Iowa court the issues (1) that the conveyance by them to Blackman of the Iowa land was procured by fraud, and that this entitled them to a recision of the sale, and (2) that such conveyance was without consideration.[14-15] Certainly neither of these issues presented a Federal question, vital as they and each of them were to Dull's right of recovery in *any* suit in any court. On each of these questions both the State courts (trial and appellate) found against Dulls; the latter court saying "That fraud on the part of Blackman had not been so established as to warrant a court in setting aside the conveyance made from Dull

to Blackman."[134] Aside from the plain fact that neither of such questions were Federal questions, both of the issues thus raised and so essential to Dull's recovery, were *questions of fact*, questions which, as we understand it, this court will not review on error to the highest court of a state. As these issues were such that Dulls must plead and sustain them by evidence in any court, whether state or Federal, in order to be relieved from the effect of their voluntary act in conveying their Iowa land to Blackman, surely such issues and the decision thereof against them, were grounds broad enough to sustain the judgment of the State court, without reference to any Federal question, or any number of such questions that might have been raised in the case. The decision of the State court, did not, therefore, rest on any Federal question, but on certain essential facts, and on the application thereto of certain elementary principles by and in whatever court the cause might have been brought. The judgment thus rendered against plaintiffs in error could have been given and must have been given (if the facts were as found by the state court whose finding thereon is conclusive) without deciding any Federal question, even if there was one in the case; and the decision of such a question, even if present, was not necessary to the determination of this cause.

Whether the courts of New York had any jurisdiction of Phelan and Duffie, respectively the title holder and mortgagee of the Iowa land, was another question of fact to be decided on the evidence by the State court to which the issue was presented. Dulls presented to the Iowa court that very issue. In pleading, in said court, the alleged decree of the New York court, they averred[14] that said court had "full jurisdiction of the parties and subject matter in controversy". This averment was controverted by Phelan, Duffie *et al*,[23] and

presented only an issue of fact to be determined on the evidence, and on its determination depended whether there was any decree to construe. A simple issue of whether or not there was jurisdiction in a cause and the decision thereof on extrinsic evidence presents not a Federal question *but one of fact*, upon which we think the finding of the State court is conclusive; and said *alleged New York decree* nowhere recites or claims that Phelan, Duffie or Wright were ever served in New York with notice of said suit or ever appeared thereto.

Dull's laches was another independent issue found against them by the State court;[134] was a matter of importance in an equity cause such as this, and barred a petitioner from relief however good a cause he may have originally had. The decision on that issue alone was sufficient to sustain the judgment rendered. It was a defense independent of any other defense, (even if the other defense rested on a Federal question) and was sufficient of itself, *Jenkins v. Loewenthal*, 110 U. S. 222.

The settlement made between Dull and Blackman, which settlement was found as a *fact* in the decree[106] from which the writ of error was prosecuted in this cause, was certainly a sufficient estoppel against Dulls when claiming the land as against Phelan and Duffie whose rights in and to the land had accrued in reliance on such settlement, and the information thereof given to them by Dull. The sufficiency of that plea and of the evidence to sustain it, was purely a question for the State court, and its decision, whether correct or erroneous is not, we believe, subject to review here, as this court does not sit as a court of appeals from the decision of a State court. So that if there had been several Federal questions in the case, and all of them had been held in Dull's favor, this question of estoppel by their settlement,[135] and the disclosure thereof to Duffie and through him to Phelan, and the latters' re-

liance thereon when taking the deed and mortgage, surely furnished in itself a ground of decision sufficiently broad to sustain the judgment rendered by the State court against the Dulls, and now complained of by them.

The decree and findings in the record were those of the trial court, but as they were "in all respects affirmed" by the Supreme Court of Iowa which does not in such cases prepare, sign or enter a new decree, they became at once the findings and decree of the Supreme Court. The court in its opinion states that: "We are fully satisfied in every particular with the decree of the District Court."[185] That decree and the opinion of the Supreme Court show that other material matters were considered and necessarily entered into the result; and among them were such questions as the effect of Dull's neglect to record his mortgage; and his failure to return that mortgage and the $10,000.00 note which he received from Blackman. These questions were *all* decided adversely to plaintiffs in error. We refer to the opinion as well as to the record, as we take it that since the adoption (April 28, 1873) of Sec. 2 of Rule 8 of this court, your honors exercise the right of looking into the opinion of the State court, as one of the best means of ascertaining what questions were involved, and what decisions were rendered thereon. *Wood Machine Co. vs. Skinner*, 139 U. S. 293; *Murdock vs. Memphis*, 20 Wall, 590; *Gross vs. Mortgage Co.*, 108 U. S. 477; *Adams Co. vs. Ry. Co.*, 112 U. S. top of page 129, and *Fire Ass'n. vs. New York*, 119 U. S. 110.

We, therefore, confidently leave it to that opinion as well as the main record to further show the many material matters which said court did decide in the cause at bar, and that aside from the alleged Federal question, such decision was based on independent grounds, each broad enough to sustain its judgment

without regard to the alleged Federal question, and that hence this court will not take jurisdiction of this cause. *Murdock vs. Memphis*, 20 Wall, 590; *Beaupre vs. Noyes*, 138 U. S. 397; *Mowing & R. Co. vs. Skinner*, 139 Id. 293; *Hammond vs. Johnson*, 142 Id. 73; *Navigation Co. vs. Reybold, Id.* 637; *Eustes vs. Bolles*, 150 Id. 361, and *Railroad Co. vs. Cent. Ry.*, 159 Id. on page 640.

We have always understood the rule to be that if a party intends (in case he is beaten) to take his case to this court, to review the judgment of the highest court of the State, he must rest his case solely on a Federal question; that he cannot have the advantage of presenting to the State court one or more *other* issues, not involving any Federal question, and trying to have a judgment in his favor *thereon*, and that when he is beaten on *all* the issues, ignore the judgment of the State court against him on the non-Federal questions, and have another day in *this* court on *one* of the several issues decided against him by the State court—*i. e.* a Federal question— if such question actually existed in the case.

II. On Motion to Affirm.

As we have seen, there was no jurisdiction in the New York court of any of the parties to the action therein, except Blackman, and as he had parted with all his interest in the subject matter of such suit as early as September 14th, 1892,[38] and before the commencement of the action in New York (which was on November 3d, 1892),[42] the making of him a party to such suit, as well as making him a defendant in the cross-petition filed in the Iowa court on February 15, 1893,[13] certainly seems strange and useless. That he had parted with all his interest in the subject matter of the suits in both the states, was found as a fact by the Iowa courts.[133] Then the claim of plaintiffs in error to bind third parties or to bind the subject matter of

the suit, by a decree of a foreign court against Blackman, when such court did not have jurisdiction of either the subject matter or of such third parties to be affected by such decree, is the "Federal question" in this cause.

The decision and judgment of the Iowa court did not involve the *construction* of the decree of the New York court, but did determine whether or not there was jurisdiction in the last named court to make a decree which would affect Phelan, the record title holder and Duffie, the mortgagee—for there was no pretense of local jurisdiction of the subject matter of the suit. The question of fact, to be tried upon evidence, outside of the copy of the alleged decree, was whether Duffie, Phelan, Wright *et al*, were residents of New York, or were found in that state and served with summons therein; and if not, whether they had voluntarily appeared to the suit. If they had been so served or had voluntarily appeared to the action, such court might, in case there was "fraud, trust or contract" as between Phelan or Duffie, and Dull, have had jurisdiction to render a decree *in personam*. *Massie vs. Watts*, 6 Cr. 148. But as the real estate which was the sole subject matter of the suit, was wholly without the territorial limits of New York, and as there was no jurisdiction of the persons of the said defendants, there was, of course, no decree to construe or to which to give the full faith and credit that an actual judgment of one State would be entitled to in another State.

The alleged New York decree does not of or in itself furnish any evidence or contain any recital of facts showing or claiming that any service of process was had on Phelan, Duffie or Wright in that State or that they or any of them made any appearance to such suit. If such decree had contained such recitals, or of itself in any manner claimed jurisdiction of said

parties, such claim and recitals would still have been open questions whenever such jurisdiction was denied. That the lack of jurisdiction is a defense to any claim founded upon a judgment of the courts of another State, is well settled in this court. *Christmas vs. Russell*, 5 Wall. 290; *Maxwell vs. Stewart*, 22 Id. 77; as well as that a judgment is absolutely void unless process was served or the party appeared; *D'Arcy vs. Ketchum*, 11 How. 105; and that if there had been a due return of the sheriff that personal service had been made, that might be contradicted; *Knowles vs. Gaslight Co.*, 19 Wall. 58; and *Thompson vs. Whitman*, 18 Id. 457. It is also noticeable that no attempt was made by plaintiffs in error to show that there was any service in New York of process on or appearance by Phelan or Duffie or Wright. The evidence of said defendants to the contrary was conclusive and undenied.[42]

Indeed the New York court in making an order for publication of notice of its pretended suit against them[61] expressly found and made of record, that personal service of the summons from said court could not be made on Wright, Askwith, Phelan and Duffie, or any of them, within the State of New York. And by the stipulation of the parties, made on the trial, it was settled that neither of said persons were served elsewhere than in Nebraska and Iowa, and that neither of them ever appeared to the New York suit.[42] The only service of notice of the New York suit was a pretended service in Iowa and Nebraska. It is nowhere pleaded by Dulls that the decree of the New York court taken as this was on a pretended service on parties in another state and without an appearance by them, would have in *that* State the force and effect which it is now claimed should be given to it in the courts of Iowa. There is no showing of that kind.

Nevertheless, plaintiffs in error claim that the al-

leged decree against Blackman, pretended to be given in a suit brought after he had divested himself of all his interest in the subject matter thereof, and in which nobody was served within the New York jurisdiction, or appeared (except himself), divested the interests of others (who were not before the court), in the subject matter of the suit, which was real estate lying in another state.

This is the "Federal question" claimed to be in this cause, and in the decision of which this court is asked to reverse the judgment of the State court, given on other and different issues of which this court has no cognizance and upon which "Federal question" the State court passed no further than to find that it did not exist, and that, there was no evidence of any New York decree as to Phelan, Duffie and Wright for the State court to construe in an action against them, in which action Dulls alleged that Phelan and Duffie held the beneficial interest in the subject matter of the controversy. The decision of the State court was that as a *matter of fact* there was no decree of the courts of New York as to Phelan, Duffie and Wright, and this cause therefore, comes plainly within the decision of this court in *Mining Co. vs. Boggs*, 3 Wall. 304. The question there *claimed* to be before this court was that the State court had decided against the *validity* of a license to extract gold from certain lands, and this court said (page 310): "The decision was that no such license existed; and this was a finding by the court of a question of fact upon the submission of the whole case by the parties, rather than a judgment on a question of law." And this court added that the case was the same in principle as a defense, in ejectment, of a patent from the United States, with an allegation of the loss of such patent and said: "Such judgment would deny, not the validity, but the existence of the

patent, and this court would have no jurisdiction to review it."

For plaintiffs in error to say that this court has jurisdiction in this case, is to claim that this court should determine that the highest court of a State has failed to properly construe and failed to give force and effect to a foreign decree, which, that State court has decided, on extrinsic evidence and on an issue squarely raised, did not exist. What that Iowa court necessarily did at the very outset of the case, and before it could construe or give or refuse to give force and effect to the alleged decree, was to pass on the testimony on the said issue and ascertain if there was any decree which in turn would be competent evidence against those parties who denied any jurisdiction of them in the court whose decree it was alleged to be. For that a valid judgment—one rendered on full jurisdiction both of the parties and subject matter of the suit by the courts of one State, is but *evidence* in the courts of another State; and that Art. 4, Sec. 1, of the Constitution and Sec. 905 of the Rev. Stat. simply establish a rule of evidence, is settled. Story on Comflict of Laws, 7, Ed. 609; *Thompson vs. Whitman*, 18 Wall. 457; *Hanley vs. Donoghue*, 116 U. S. 4, and *Wisconsin Insurance Co.*, 127 U. S. 292.

Despite all this the plaintiffs in error claim or seem to claim that if they have a decree *in personam against Blackman* in the New York court, then such decree is conclusive both upon the land in the foreign state, and on the title holder and incumbrancer who were not before the court rendering such decree and that what *purports* to be a decree is conclusive that it is such, and that it is also *conclusive of the jurisdiction of the court rendering* it *over the persons* whose names are mentioned therein. Their mistake is evident.

2. There was then no decree, even *in personam*,

to enforce against the owner and mortgagee of the land; nothing to construe or to give effect to as between individuals. Was there then any judgment *in rem* to bind the subject matter of the suit or to act upon it and settle its status, independent of any act of the owner Phelan or the incumbrancer Duffie to be performed with reference to it?

That the jurisdiction over real estate is territorial and local, and can only be exercised where the land is situated, is, we believe, elementary. Speaking on this subject Judge Story said: "And certainly there can be *no pretense* that such judgment or decrees bind the property itself, *etc. Conflict of Laws*, 7 Ed. §. 543, page 685. "A decree cannot operate beyond the state in which the jurisdiction is exercised. It is not in the power of one state to prescribe the mode by which real estate shall be conveyed in another." Judge McLain in *Watts vs. Waddle*, 6 Pet. 389. And see *Ellenwood vs. Chair Co.*, 158 U. S. 105. And speaking of such a decree as Dull sought in his New York suit this court has said: "It is clearly not a judgment *in rem*, establishing a title in land but operates *in personam* only." *Hart vs. Samson*, 110 U. S. 155. And in that case this court, speaking of the equity powers of a court in such cases as that brought by Dull in New York, says: "It has no inherent power by the mere force of its decree to *annul a deed or establish a title*. If the New York decree did attempt to annul a deed, *i. e.* the deed, from Dull to Blackman, it did something which this court says it could not do. Beyond that it only professed to act *in personam* requiring *Blackman* to deed it back and did not attempt to "establish a title" as against his grantees and incumbrancers. In *Carpenter vs. Strange*, 141 U. S. 87, where both plaintiff and defendant, the title holder of land in Tennessee, were residents of New York, and

defendant was served in said state of New York and appeared to the suit therein, this court held (p. 106) that the decree of the New York court was a nullity as to such real estate in the other State.

In Iowa, where the land in controversy is situated, the jurisdiction in such cases as this is strictly limited to its locality. The law of that state reads: Code of 1873. "Section 2576. Actions for the following causes must be brought *in the county* in which the subject of the action, or some part thereof, is situated: 1. For the recovery of real property, or of an estate therein, or for the determination of such right or interest."

And in speaking of such foreign judgments, the Supreme Court of Iowa said conclusively: "When the case involves naked questions of title, the courts of a State, other than that where the land is situated, cannot sustain their jurisdiction." And that such courts "having authority to act upon the person may make decrees not binding on the land itself, but on the conscience of the party in regard to the land." *McGregor vs. McGregor*, 9 Ia., 65. And to the same effect, *Burnly vs. Stevenson*, 24 Ohio, 474.

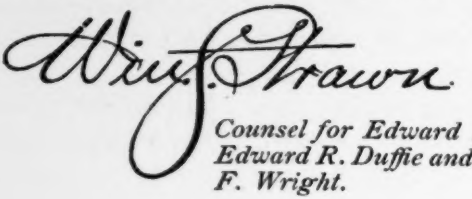
The question, if any, of the effect of service on Phelan and Duffie in the State of Nebraska, and on Wright and Askwith in the State of Iowa, of what purported to be a summons to appear before the New York court in the suit in which the alleged decree was entered, is disposed of in a few words. Where the subject matter of the action, such as realty, lies within the territorial jurisdiction of the court in which the suit is brought, it is competent for the legislature of such state to provide for *constructive* service, as by publication, or by personal service without the state, on parties to such a suit who cannot be served within said state, and on such service to exclude parties so served from any interest in or claim to the *rem* then

being within the actual jurisdiction and control of the said court. But to say that such court can by constructive service, or by the aforesaid substitute therefor, divest the interests and adjudicate the rights of parties who are non-residents, in real estate lying beyond its territorial limits, is, we believe, a proposition which requires no other refutation than a simple statement thereof. This claim of a Federal question by reason of the failure to give effect to a decree of the courts of another State, where that court had no jurisdiction, either of the parties owning the interests sought to be divested, or of the subject of the action, seems to us to make "the question on which the jurisdiction depends so frivolous" as to justify us in moving for the affirmance of the decree.

3. The alleged New York decree, offered in evidence in the Iowa court, did not profess to do much anyway. It said that it annulled the deed from Dull to Blackman; but this court said it had no power to do so. *Hart vs. Sansom, Supra.* If it had annulled said deed, it certainly could not affect rights which had attached to the land while the title was of record in Blackman; and if Blackman had reconveyed, as said decree required him to do, he certainly could not have conveyed any greater rights than those remaining in him when such reconveyance should be made. And the requirement of the alleged decree that *Blackman* should reconvey to Dull, looks a little as if said court had not much faith in the power of *its decree* to accomplish that end by the force of such decree. If the New York court wants to attempt to punish Phelan and Duffie for disobeying its alleged but void injunction, it has that privilege whenever they come within its jurisdiction. But it does seem a little unreasonable for Dulls to practically ask the Iowa court to (in effect) punish Duffie and Phelan for disobedience to said al-

leged decree, by divesting the title of the one and the lien of the other, and then complain to this court that the Iowa judiciary, in failing to do so, is not giving full faith and credit to the alleged judgment of the New York courts. Especially is this true when that decree is a nullity both as to the land in controversy and as to the owner Phelan and the incumbrancer Duffie.

These considerations should, we think, dispose of so much of the case as comes to this court, and leave the judgment of the Supreme Court of Iowa to stand on the other issues and questions there tried and decided in our favor. Respectfully submitted,



Counsel for Edward Phelan, Edward R. Duffie and George F. Wright.